

## **NURSE PRACTICE ACT**

### **Part 1 - General Provisions**

#### **58-31b-101. Title.**

This chapter is known as the "Nurse Practice Act."

#### **58-31b-102. Definitions.**

In addition to the definitions in Section 58-1-102, as used in this chapter:

- (1) "Administrative penalty" means a monetary fine or citation imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct in accordance with a fine schedule established by rule and as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (2) "Applicant" means a person who applies for licensure or certification under this chapter by submitting a completed application for licensure or certification and the required fees to the department.
- (3) "Approved education program" means a nursing education program that meets the minimum standards for educational programs established under this chapter and by division rule in collaboration with the board.
- (4) "Board" means the Board of Nursing created in Section 58-31b-201.
- (5) "Consultation and referral plan" means a written plan jointly developed by an advanced practice registered nurse and a consulting physician that permits the advanced practice registered nurse to prescribe schedule II-III controlled substances in consultation with the consulting physician.
- (6) "Consulting physician" means a physician and surgeon or osteopathic physician and surgeon licensed in accordance with this title who has agreed to consult with an advanced practice registered nurse with a controlled substance license, a DEA registration number, and who will be prescribing schedule II-III controlled substances.
- (7) "Diagnosis" means the identification of and discrimination between physical and psychosocial signs and symptoms essential to the effective execution and management of health care.
- (8) "Examinee" means a person who applies to take or does take any examination required under this chapter for licensure.
- (9) "Licensee" means a person who is licensed or certified under this chapter.
- (10) "Long-term care facility" means any of the following facilities licensed by the Department of Health pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act:
  - (a) a nursing care facility;
  - (b) a small health care facility;
  - (c) an intermediate care facility for the mentally retarded;
  - (d) an assisted living facility Type I or II; or
  - (e) a designated swing bed unit in a general hospital.
- (11) "Medication aide certified" means a certified nurse aide who:
  - (a) has a minimum of 2,000 hours of experience working as a certified nurse aide;
  - (b) has received a minimum of 60 hours of classroom and 40 hours of practical training that is approved by the division in collaboration with the board, in administering routine medications to patients or residents of long-term care facilities; and
  - (c) is certified by the division as a medication aide certified.
- (12) (a) "Practice as a medication aide certified" means the limited practice of nursing under the supervision, as defined by the division by administrative rule, of a licensed nurse, involving routine patient care that requires minimal or limited specialized or general knowledge, judgment, and skill, to an individual who is ill, injured, infirm,

- developmentally or physically disabled, mentally disabled, or mentally retarded, and who is in a regulated long-term care facility.
- (b) "Practice as a medication aide certified":
- (i) includes:
    - (A) providing direct personal assistance or care; and
    - (B) administering routine medications to patients in accordance with a formulary and protocols to be defined by the division by rule; and
  - (ii) does not include assisting a resident of an assisted living facility, a long term care facility, or an intermediate care facility for the mentally retarded to self administer a medication, as regulated by the Department of Health by administrative rule.
- (13) "Practice of advanced practice registered nursing" means the practice of nursing within the generally recognized scope and standards of advanced practice registered nursing as defined by rule and consistent with professionally recognized preparation and education standards of an advanced practice registered nurse by a person licensed under this chapter as an advanced practice registered nurse. Advanced practice registered nursing includes:
- (a) maintenance and promotion of health and prevention of disease;
  - (b) diagnosis, treatment, correction, consultation, and referral for common health problems;
  - (c) prescription or administration of prescription drugs or devices including:
    - (i) local anesthesia;
    - (ii) schedule IV-V controlled substances; and
    - (iii) schedule II-III controlled substances in accordance with a consultation and referral plan; or
  - (d) the provision of preoperative, intraoperative, and postoperative anesthesia care and related services upon the request of a licensed health care professional by an advanced practice registered nurse specializing as a certified registered nurse anesthetist, including:
    - (i) preanesthesia preparation and evaluation including:
      - (A) performing a preanesthetic assessment of the patient;
      - (B) ordering and evaluating appropriate lab and other studies to determine the health of the patient; and
      - (C) selecting, ordering, or administering appropriate medications;
    - (ii) anesthesia induction, maintenance, and emergency, including:
      - (A) selecting and initiating the planned anesthetic technique;
      - (B) selecting and administering anesthetics and adjunct drugs and fluids; and
      - (C) administering general, regional, and local anesthesia;
    - (iii) postanesthesia follow-up care, including:
      - (A) evaluating the patient's response to anesthesia and implementing corrective actions; and
      - (B) selecting, ordering, or administering the medications and studies listed in Subsection (13) (d); and
    - (iv) other related services within the scope of practice of a certified registered nurse anesthetist, including:
      - (A) emergency airway management;
      - (B) advanced cardiac life support; and
      - (C) the establishment of peripheral, central, and arterial invasive lines; and
    - (v) for purposes of Subsection (13) (d), "upon the request of a licensed health care professional":
      - (A) means a health care professional practicing within the scope of the health care professional's license, requests anesthesia services for a specific patient; and

- (B) does not require an advanced practice registered nurse specializing as a certified registered nurse anesthetist to enter into a consultation and referral plan or obtain additional authority to select, administer, or provide preoperative, intraoperative, or postoperative anesthesia care and services.
- (14) "Practice of nursing" means assisting individuals or groups to maintain or attain optimal health, implementing a strategy of care to accomplish defined goals and evaluating responses to care and treatment. The practice of nursing requires substantial specialized or general knowledge, judgment, and skill based upon principles of the biological, physical, behavioral, and social sciences, and includes:
  - (a) initiating and maintaining comfort measures;
  - (b) promoting and supporting human functions and responses;
  - (c) establishing an environment conducive to well-being;
  - (d) providing health counseling and teaching;
  - (e) collaborating with health care professionals on aspects of the health care regimen;
  - (f) performing delegated procedures only within the education, knowledge, judgment, and skill of the licensee; and
  - (g) delegating nurse interventions that may be performed by others and are not in conflict with this chapter.
- (15) "Practice of practical nursing" means the performance of nursing acts in the generally recognized scope of practice of licensed practical nurses as defined by rule and as provided in this Subsection (15) by a person licensed under this chapter as a licensed practical nurse and under the direction of a registered nurse, licensed physician, or other specified health care professional as defined by rule. Practical nursing acts include:
  - (a) contributing to the assessment of the health status of individuals and groups;
  - (b) participating in the development and modification of the strategy of care;
  - (c) implementing appropriate aspects of the strategy of care;
  - (d) maintaining safe and effective nursing care rendered to a patient directly or indirectly; and
  - (e) participating in the evaluation of responses to interventions.
- (16) "Practice of registered nursing" means performing acts of nursing as provided in this Subsection (16) by a person licensed under this chapter as a registered nurse within the generally recognized scope of practice of registered nurses as defined by rule. Registered nursing acts include:
  - (a) assessing the health status of individuals and groups;
  - (b) identifying health care needs;
  - (c) establishing goals to meet identified health care needs;
  - (d) planning a strategy of care;
  - (e) prescribing nursing interventions to implement the strategy of care;
  - (f) implementing the strategy of care;
  - (g) maintaining safe and effective nursing care that is rendered to a patient directly or indirectly;
  - (h) evaluating responses to interventions;
  - (i) teaching the theory and practice of nursing; and
  - (j) managing and supervising the practice of nursing.
- (17) "Routine medications":
  - (a) means established medications administered to a medically stable individual as determined by a licensed health care practitioner or in consultation with a licensed medical practitioner; and
  - (b) is limited to medications that are administered by the following routes:
    - (i) oral;
    - (ii) sublingual;

- (iii) buccal;
  - (iv) eye;
  - (v) ear;
  - (vi) nasal;
  - (vii) rectal;
  - (viii) vaginal;
  - (ix) skin ointments, topical including patches and transdermal;
  - (x) premeasured medication delivered by aerosol/nebulizer; and
  - (xi) medications delivered by metered hand-held inhalers.
- (18) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-31b-501.
- (19) "Unlicensed assistive personnel" means any unlicensed person, regardless of title, to whom tasks are delegated by a licensed nurse as permitted by rule and in accordance with the standards of the profession.
- (20) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-31b-502 and as may be further defined by rule.

#### **58-31b-103. Education and enforcement fund.**

- (1) There is created within the General Fund a restricted account known as the "Nurse Education and Enforcement Fund."
- (2) The account shall be nonlapsing and consist of:
- (a) administrative penalties imposed under Section 58-31b-503; and
  - (b) interest earned on monies in the account.
- (3) Monies in the account may be appropriated by the Legislature for the following purposes:
- (a) education and training of licensees or potential licensees under this chapter;
  - (b) enforcement of this chapter by:
    - (i) investigating unprofessional or unlawful conduct;
    - (ii) providing legal representation to the division when legal action is taken against a person engaging in unprofessional or unlawful conduct; and
    - (iii) monitoring compliance of renewal requirements;
  - (c) survey nursing education programs throughout the state;
  - (d) education and training of board members; and
  - (e) review and approve nursing education programs and medication aide certified training programs.

### **Part 2 - Board**

#### **58-31b-201. Board.**

- (1) There is created the Board of Nursing that consists of the following eleven members:
- (a) nine nurses in a manner as may be further defined in division rule; and
  - (b) two members of the public.
- (2) The board shall be appointed and serve in accordance with Section 58-1-201.
- (3) The board shall carry out the duties and responsibilities in Sections 58-1-202 and 58-1-203 and shall:
- (a) (i) recommend to the division minimum standards for educational programs qualifying a person for licensure or certification under this chapter;
  - (ii) recommend to the division denial, approval, or withdrawal of approval regarding educational programs that meet or fail to meet the established minimum standards; and
  - (iii) designate one of its members on a permanent or rotating basis to:
    - (A) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and
    - (B) advise the division in its investigation of these complaints.

- (b) A board member who has, under Subsection (3)(a)(iii), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.
- (4) (a) The director shall appoint an individual to serve as the executive administrator of the Board of Nursing. Except when the board serves as a presiding officer in an adjudicative procedure, the executive administrator shall serve as an ex officio member of the board and shall represent the position of the division in matters considered by the board.
- (b) The executive administrator shall be a licensed registered nurse, shall have earned a masters degree in nursing, and shall have a minimum of five years of experience working in nursing administration or nursing education.

**58-31b-202. Repealed.**

**Part 3 - Licensing**

**58-31b-301. License or registration required - Classifications.**

- (1) A license is required to engage in the practice of nursing, except as specifically provided in Sections 58-1-307 and 58-31b-308.
- (2) The division shall issue to a person who qualifies under this chapter a license or certification in the classification of:
  - (a) licensed practical nurse;
  - (b) registered nurse;
  - (c) advanced practice registered nurse intern;
  - (d) advanced practice registered nurse;
  - (e) advanced practice registered nurse - CRNA without prescriptive practice; and
  - (f) medication aide certified.
- (3) An individual holding an advanced practice registered nurse license as of July 1, 1998, who cannot document the successful completion of advanced course work in patient assessment, diagnosis and treatment, and pharmacotherapeutics, may not prescribe and shall be issued an "APRN - without prescriptive practice" license.
- (4) The division shall grant an advanced practice registered nurse license to any licensed advanced practice registered nurse currently holding prescriptive authority under any predecessor act on July 1, 1998.
- (5) An individual holding a certified registered nurse anesthetist license as of July 1, 2007, shall be issued an "APRN-CRNA-without prescriptive practice" license.

**58-31b-301.5. Repealed.**

**58-31b-301.6. Repealed.**

**58-31b-302. Qualifications for licensure or certification - Criminal background checks.**

- (1) An applicant for certification as a medication aide shall:
  - (a) submit an application to the division on a form prescribed by the division;
  - (b) pay a fee to the division as determined under Section 63J-1-303;
  - (c) have a high school diploma or its equivalent;
  - (d) have a current certification as a nurse aide, in good standing, from the Department of Health;
  - (e) have a minimum of 2,000 hours of experience within the two years prior to application, working as a certified nurse aide in a long-term care facility;

- (f) \_ obtain letters of recommendation from a long-term care facility administrator and one licensed nurse familiar with the applicant's work practices as a certified nurse aide;
  - (g) be in a condition of physical and mental health that will permit the applicant to practice safely as a medication aide certified;
  - (h) have completed an approved education program or an equivalent as determined by the division in collaboration with the board;
  - (i) have passed the examinations as required by division rule made in collaboration with the board; and
  - (j) meet with the board, if requested, to determine the applicant's qualifications for certification.
- (2) An applicant for licensure as a licensed practical nurse shall:
- (a) submit to the division an application in a form prescribed by the division;
  - (b) pay to the division a fee determined under Section 63J-1-303;
  - (c) have a high school diploma or its equivalent;
  - (d) be in a condition of physical and mental health that will permit the applicant to practice safely as a licensed practical nurse;
  - (e) have completed an approved practical nursing education program or an equivalent as determined by the board;
  - (f) have passed the examinations as required by division rule made in collaboration with the board; and
  - (g) meet with the board, if requested, to determine the applicant's qualifications for licensure.
- (3) An applicant for licensure as a registered nurse shall:
- (a) submit to the division an application form prescribed by the division;
  - (b) pay to the division a fee determined under Section 63J-1-303;
  - (c) have a high school diploma or its equivalent;
  - (d) be in a condition of physical and mental health that will allow the applicant to practice safely as a registered nurse;
  - (e) have completed an approved registered nursing education program;
  - (f) have passed the examinations as required by division rule made in collaboration with the board; and
  - (g) meet with the board, if requested, to determine the applicant's qualifications for licensure.
- (4) Applicants for licensure as an advanced practice registered nurse shall:
- (a) submit to the division an application on a form prescribed by the division;
  - (b) pay to the division a fee determined under Section 63J-1-303;
  - (c) be in a condition of physical and mental health which will allow the applicant to practice safely as an advanced practice registered nurse;
  - (d) hold a current registered nurse license in good standing issued by the state or be qualified at the time for licensure as a registered nurse;
  - (e)
    - (i) have earned a graduate degree in:
      - (A) an advanced practice registered nurse nursing education program; or
      - (B) a related area of specialized knowledge as determined appropriate by the division in collaboration with the board; or
    - (ii) have completed an nurse anesthesia program in accordance with Subsection (4) (f) (ii);
  - (f) have completed:
    - (i) course work in patient assessment, diagnosis and treatment, and pharmacotherapeutics from an education program approved by the division in collaboration with the board; or
    - (ii) a nurse anesthesia program which is approved by the Council on Accreditation of Nurse Anesthesia Educational Programs;
  - (g) have successfully completed clinical practice in psychiatric and mental health nursing, including psychotherapy as defined by division rule,

- after completion of the masters degree required for licensure, to practice within the psychiatric and mental health nursing specialty;
  - (h) have passed the examinations as required by division rule made in collaboration with the board;
  - (i) be currently certified by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of the certification; and
  - (j) meet with the board, if requested, to determine the applicant's qualifications for licensure.
- (5) For each applicant for licensure or certification under this chapter:
  - (a) the applicant shall:
    - (i) submit fingerprint cards in a form acceptable to the division at the time the application is filed; and
    - (ii) consent to a fingerprint background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application; and
  - (b) the division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check through the national criminal history system (NCIC) or any successor system.
- (6) For purposes of conducting the criminal background checks required in Subsection (5), the division shall have direct access to criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.
- (7)
  - (a)
    - (i) Any new nurse license or certification issued under this section shall be conditional, pending completion of the criminal background check.
    - (ii) If the criminal background check discloses the applicant has failed to accurately disclose a criminal history, the license or certification shall be immediately and automatically revoked.
  - (b)
    - (i) Any person whose conditional license or certification has been revoked under Subsection (7)(a) shall be entitled to a postrevocation hearing to challenge the revocation.
    - (ii) The hearing shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (9)
  - (a) If a person has been charged with a violent felony, as defined in Subsection 76-3-203.5(1)(c), and, as a result, the person has been convicted, entered a plea of guilty or nolo contendere, or entered a plea of guilty or nolo contendere held in abeyance pending the successful completion of probation:
    - (i) the person is disqualified for licensure under this chapter; and
    - (ii)
      - (A) if the person is licensed under this chapter, the division:
        - (I) shall act upon the license as required under Section 58-1-401; and
        - (II) may not renew or subsequently issue a license to the person under this chapter; and
      - (B) if the person is not licensed under this chapter, the division may not issue a license to the person under this chapter.
  - (b) If a person has been charged with a felony other than a violent felony, as defined in Subsection 76-3-203.5(1)(c), and, as a result, the person has been convicted, entered a plea of guilty or nolo contendere, or entered a plea of guilty or nolo contendere held in abeyance pending the successful completion of probation:
    - (i) if the person is licensed under this chapter, the division shall determine whether the felony disqualifies the person for licensure under this chapter and act upon the license, as required, in accordance with Section 58-1-401; and
    - (ii) if the person is not licensed under this chapter, the person may not file an application for licensure under this chapter any

sooner than five years after having completed the conditions of the sentence or plea agreement.

**58-31b-303. Qualifications for licensure - Graduates of nonapproved nursing programs.**

An applicant for licensure as a practical nurse or registered nurse who is a graduate of a nursing education program not approved by the division in collaboration with the board must comply with the requirements of this section.

- (1) An applicant for licensure as a licensed practical nurse shall:
  - (a) meet all requirements of Subsection 58-31b-302(2), except Subsection (2)(e); and
  - (b) produce evidence acceptable to the division and the board that the nursing education program completed by the applicant is equivalent to the minimum standards established by the division in collaboration with the board for an approved licensed practical nursing education program.
- (2) An applicant for licensure as a registered nurse shall:
  - (a) meet all requirements of Subsection 58-31b-302(3), except Subsection (3)(e); and
  - (b)
    - (i) pass the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination; or
    - (ii) produce evidence acceptable to the division and the board that the applicant is currently licensed as a registered nurse in one of the states, territories, or the District of Columbia of the United States and has passed the NCLEX-RN examination.

**58-31b-304. Qualifications for admission to the examinations.**

- (1) To be admitted to the examinations required for certification as a medication aide certified, a person shall:
  - (a) submit an application on a form prescribed by the division;
  - (b) pay a fee as determined by the division under Section 63J-1-303; and
  - (c) meet all requirements of Subsection 58-31b-302(1), except the passing of the examination.
- (2) To be admitted to the examinations required for licensure as a practical nurse, a person shall:
  - (a) submit an application form prescribed by the division;
  - (b) pay a fee as determined by the division under Section 63J-1-303; and
  - (c) meet all requirements of Subsection 58-31b-302(2), except Subsection (2)(f).
- (3) To be admitted to the examinations required for licensure as a registered nurse, a person shall:
  - (a) submit an application form prescribed by the division;
  - (b) pay a fee as determined by the division under Section 63J-1-303; and
  - (c) meet all the requirements of Subsection 58-31b-302(3), except Subsection (3)(f).

**58-31b-305. Term of license - Expiration - Renewal.**

- (1) The division shall issue each license or certification under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.
- (2) At the time of renewal, the licensee or person certified under this chapter shall show satisfactory evidence of each of the following renewal requirements:
  - (a) complete and submit an application for renewal in a form prescribed by the division and pay the renewal fee determined under Section 63J-1-303; and



- (b) meet continuing competency requirements as established by rule, which shall include continuing education requirements for medication aide certified established by the board and adopted by the division by rule.
- (3) In addition to the renewal requirements under Subsection (2), a person licensed as an advanced practice registered nurse shall be currently certified by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of that qualification or if licensed prior to July 1, 1992, meet the requirements established by rule.
- (4) Each license or certification automatically expires on the expiration date shown on the license or certification unless renewed in accordance with Section 58-1-308.

**58-31b-306. APRN intern license.**

- (1) (a) The division may issue an APRN intern license to a person who meets all qualifications for a license as an advanced practice registered nurse under this chapter, except for the passing of required examinations, if the applicant:
  - (i) is a graduate of an approved nursing education program within the year immediately preceding application for an intern license;
  - (ii) has never before taken the examinations; and
  - (iii) submits to the division evidence of having secured employment conditioned upon issuance of the APRN intern license, and the employment is under the supervision of an advanced practice registered nurse or physician as defined by division rule.
- (b) An APRN intern license issued under Subsection (1) (a) expires on the earlier of:
  - (i) a date following a period established by division rule;
  - (ii) the date upon which the division receives notice from the examination agency that the individual failed to take or pass the examinations upon notification to the applicant; or
  - (iii) the date upon which the division issues the individual an APRN license.
- (2) An applicant specializing in psychiatric mental health nursing may be issued an APRN intern license upon completion of all licensure requirements, except for the passing of required examinations and completion of required clinical practice hours.
- (3) (a) The division may issue an APRN intern license to a person who meets all qualifications for a license as an advanced practice registered nurse under this chapter, except course work in patient assessment or pharmacotherapeutics, if that applicant:
  - (i) is licensed in good standing as an advanced practice registered nurse in another state or jurisdiction; and
  - (ii) submits to the division evidence of having secured employment conditioned upon issuance of the APRN intern license, and the employment is under the supervision of an advanced practice registered nurse or physician as defined by division rule.
- (b) An APRN intern license issued under Subsection (3) (a) expires on the earlier of:
  - (i) a date following a period established by division rule; or
  - (ii) the date upon which the division issues the individual a regular license.

**58-31b-307. Repealed.**

**58-31b-308. Exemptions from licensure.**

- (1) In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts included within the definition of the practice of nursing, subject to the stated circumstances and limitations, without being licensed under this chapter:
  - (a) friends, family members, foster parents, or legal guardians of a patient performing gratuitous nursing care for the patient;
  - (b) persons providing care in a medical emergency;
  - (c) persons engaged in the practice of religious tenets of a church or religious denomination; and
  - (d) after July 1, 2000, a person licensed to practice nursing by a jurisdiction that has joined the Nurse Licensure Compact to the extent permitted by Section 58-31c-102.
- (2) Notwithstanding Subsection (1) (d), the division may, in accordance with Section 58-31c-102, limit or revoke practice privileges in this state of a person licensed to practice nursing by a jurisdiction that has joined the Nurse Licensing Compact.

**58-31b-308.5 Repealed.**

**58-31b-309. Continuing education.**

- (1) The division in collaboration with the board may establish continuing education requirements for each classification of nurse licensure.
- (2) The division may discriminate between classifications of licensure with respect to continuing education requirements upon finding the continuing education requirements are necessary to reasonably protect the public health, safety, or welfare.

**Part 4 - License Denial and Discipline**

**58-31b-401. Grounds for denial of licensure and disciplinary proceedings.**

- (1) Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.
- (2) If a court of competent jurisdiction determines a nurse is an incapacitated person as defined in Section 75-1-201 or that the nurse is mentally ill as defined in Section 62A-15-602, and unable to safely engage in the practice of nursing, the director shall immediately suspend the license of the nurse upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the nurse in writing of the suspension.
- (3)
  - (a) If the division and the majority of the board find reasonable cause to believe a nurse who is not determined judicially to be an incapacitated person or to be mentally ill, is incapable of practicing nursing with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the nurse with a notice of hearing on the sole issue of the capacity of the nurse to competently, safely engage in the practice of nursing.
  - (b) The hearing shall be conducted under Section 58-1-109 and Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).
- (4)
  - (a) Every nurse who accepts the privilege of being licensed under this chapter gives consent to:

- (i) submitting to an immediate mental or physical examination, at the nurse's expense and by a division-approved practitioner selected by the nurse when directed in writing by the division and a majority of the board to do so; and
  - (ii) the admissibility of the reports of the examining practitioner's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.
- (b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:
  - (i) the nurse is mentally ill or incapacitated or otherwise unable to practice nursing with reasonable skill and safety; and
  - (ii) immediate action by the division and the board is necessary to prevent harm to the nurse's patients or the general public.
- (c)
  - (i) Failure of a nurse to submit to the examination ordered under this section is a ground for the division's immediate suspension of the nurse's license by written order of the director.
  - (ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the nurse and was not related directly to the illness or incapacity of the nurse.
- (5)
  - (a) A nurse whose license is suspended under Subsection (2), (3), or (4)(c) has the right to a hearing to appeal the suspension within ten days after the license is suspended.
  - (b) The hearing held under this Subsection (5) shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the nurse's patients or the general public.
- (6) A nurse whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the nurse, under procedures established by division rule, regarding any change in the nurse's condition, to determine whether:
  - (a) the nurse is or is not able to safely and competently engage in the practice of nursing; and
  - (b) the nurse is qualified to have the nurse's license to practice under this chapter restored completely or in part.
- (7) Nothing in Section 63G-2-206 may be construed as limiting the authority of the division to report current significant investigative information to the coordinated licensure information system for transmission to party states as required of the division by Article VII of the Nurse Licensure Compact in Section 58-31c-102.
- (8) For purposes of this section:
  - (a) "licensed" or "license" includes "certified" or "certification" under this chapter; and
  - (b) any terms or conditions applied to the word "nurse" in this section also apply to a medication aide certified.

**58-31b-402. Repealed.**

**Part 5 - Unlawful and Unprofessional Conduct - Penalties**

**58-31b-501. Unlawful conduct.**

Unlawful conduct" includes:

- (1) using the following titles, names or initials, if the user is not properly licensed under this chapter:
  - (a) nurse;
  - (b) licensed practical nurse, practical nurse, or L.P.N.;
  - (c) medication aide certified, or M.A.C.;
  - (d) registered nurse or R.N.;
  - (e) registered nurse practitioner, N.P., or R.N.P.;
  - (f) registered nurse specialist, N.S., or R.N.S.;
  - (g) registered psychiatric mental health nurse specialist;
  - (h) advanced practice registered nurse;
  - (i) nurse anesthetist, certified nurse anesthetist, certified registered nurse anesthetist, or C.R.N.A.; or
  - (j) other generally recognized names or titles used in the profession of nursing;
- (2)
  - (a) using any other name, title, or initials that would cause a reasonable person to believe the user is licensed or certified under this chapter if the user is not properly licensed or certified under this chapter; and
  - (b) for purposes of Subsection (2)(a), it is unlawful conduct for a medication aide certified to use the term "nurse"; and
- (3) conducting a nursing education program in the state for the purpose of qualifying individuals to meet requirements for licensure under this chapter without the program having been approved under Section 58-31b-601.

**58-31b-502. Unprofessional conduct.**

"Unprofessional conduct" includes:

- (1) failure to safeguard a patient's right to privacy as to the patient's person, condition, diagnosis, personal effects, or any other matter about which the licensee is privileged to know because of the licensee's or person with a certification's position or practice as a nurse or practice as a medication aide certified;
- (2) failure to provide nursing service or service as a medication aide certified in a manner that demonstrates respect for the patient's human dignity and unique personal character and needs without regard to the patient's race, religion, ethnic background, socioeconomic status, age, sex, or the nature of the patient's health problem;
- (3) engaging in sexual relations with a patient during any:
  - (a) period when a generally recognized professional relationship exists between the person licensed or certified under this chapter and patient; or
  - (b) extended period when a patient has reasonable cause to believe a professional relationship exists between the person licensed or certified under the provisions of this chapter and the patient;
- (4)
  - (a) as a result of any circumstance under Subsection (3), exploiting or using information about a patient or exploiting the licensee's or the person with a certification's professional relationship between the licensee or holder of a certification under this chapter and the patient; or
  - (b) exploiting the patient by use of the licensee's or person with a certification's knowledge of the patient obtained while acting as a nurse or a medication aide certified;
- (5) unlawfully obtaining, possessing, or using any prescription drug or illicit drug;
- (6) unauthorized taking or personal use of nursing supplies from an employer;
- (7) unauthorized taking or personal use of a patient's personal property;
- (8) knowingly entering into any medical record any false or misleading information or altering a medical record in any way for the purpose of concealing an act, omission, or record of events, medical condition, or any

- other circumstance related to the patient and the medical or nursing care provided;
- (9) unlawful or inappropriate delegation of nursing care;
  - (10) failure to exercise appropriate supervision of persons providing patient care services under supervision of the licensed nurse;
  - (11) employing or aiding and abetting the employment of an unqualified or unlicensed person to practice as a nurse;
  - (12) failure to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record such a report;
  - (13) breach of a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, unless ordered by a court;
  - (14) failure to pay a penalty imposed by the division;
  - (15) prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan; and
  - (16) violating Section 58-31b-801.

**58-31b-503. Penalties and administrative actions for unlawful conduct and unprofessional conduct.**

- (1) Any person who violates the unlawful conduct provision specifically defined in Subsection 58-1-501(1)(a) is guilty of a third degree felony.
- (2) Any person who violates any of the unlawful conduct provisions specifically defined in Subsections 58-1-501(1)(b) through (f) and 58-31b-501(1)(d) is guilty of a class A misdemeanor.
- (3) Any person who violates any of the unlawful conduct provisions specifically defined in this chapter and not set forth in Subsection (1) or (2) is guilty of a class B misdemeanor.
- (4)
  - (a) Subject to Subsection (6) and in accordance with Section 58-31b-401, for acts of unprofessional or unlawful conduct, the division may:
    - (i) assess administrative penalties; and
    - (ii) take any other appropriate administrative action.
  - (b) An administrative penalty imposed pursuant to this section shall be deposited in the "Nurse Education and Enforcement Fund" as provided in Section 58-31b-103.
- (5) If a licensee has been convicted of violating Section 58-31b-501 prior to an administrative finding of a violation of the same section, the licensee may not be assessed an administrative fine under this chapter for the same offense for which the conviction was obtained.
- (6)
  - (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Section 58-31b-401, 58-31b-501, or 58-31b-502, Chapter 1, Division of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled Substances Act, or any rule or order with respect to these provisions, and that disciplinary action is appropriate, the director or the director's designee from within the division shall:
    - (i) promptly issue a citation to the person according to this chapter and any pertinent administrative rules;
    - (ii) attempt to negotiate a stipulated settlement; or
    - (iii) notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.
  - (b) Any person who is in violation of a provision described in Subsection (6)(a), as evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an adjudicative proceeding may be assessed a fine:
    - (i) pursuant to this Subsection (6) of up to \$10,000 per single violation or up to \$2,000 per day of ongoing violation, whichever

- is greater, in accordance with a fine schedule established by rule; and
- (ii) in addition to or in lieu of the fine imposed under Subsection (6)(b)(i), be ordered to cease and desist from violating a provision of Sections 58-31b-501 and 58-31b-502, Chapter 1, Division of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled Substances Act, or any rule or order issued with respect to those provisions.
- (c) Except for an administrative fine and a cease and desist order, the licensure sanctions cited in Section 58-31b-401 may not be assessed through a citation.
  - (d) Each citation issued under this section shall:
    - (i) be in writing; and
    - (ii) clearly describe or explain:
      - (A) the nature of the violation, including a reference to the provision of the chapter, rule or order alleged to have been violated;
      - (B) that the recipient must notify the division in writing within 20 calendar days of service of the citation in order to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
      - (C) the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation; and
    - (iii) be served upon any person upon whom a summons may be served:
      - (A) in accordance with the Utah Rules of Civil Procedure;
      - (B) personally or upon the person's agent by a division investigator or by any person specially designated by the director; or
      - (C) by mail.
  - (e) If within 20 calendar days from the service of a citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest the citation may be extended by the division for cause.
  - (f) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with the citation after it becomes final.
  - (g) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.
  - (h) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

#### **Part 6 - Nursing Education Programs**

##### **58-31b-601. Minimum standards for nursing programs - Medication aide training.**

- (1) A nursing education program shall be affiliated with an accredited institution of higher education in order to be approved by the division.
- (2) The minimum standards a nursing program shall meet to qualify graduates for licensure under this chapter shall be defined by division rule.
- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the provisions of this chapter, the division shall make rules defining the minimum standards for a medication aid certified training program to qualify a person for certification under this chapter as a medication aide certified.

#### **Part 7 - Immunity Provisions**

**58-31b-701. Immunity from liability.**

A person licensed, registered or certified under this chapter:

- (1) who provides emergency care in accordance with Section 78B-4-501 is entitled to the immunity from civil liability provided under that section; and
- (2) is considered a health care provider under Chapter 13, Health Care Providers Immunity from Liability Act, and is entitled to the immunity from civil liability provided under that chapter.

**58-31b-702. Reporting of disciplinary action - Immunity from liability.**

- (1) A licensed health care facility or organization or a professional society of nurses in the state that takes disciplinary action against a person licensed under this chapter relating to any of the following shall report the action in writing to the division within 30 days after the action is taken:
  - (a) that person's professional acts or omissions as a licensed nurse;
  - (b) that person's nursing competence or ability to practice nursing or health care assistance safely; or
  - (c) that person's use of alcohol or drugs in an unlawful manner or to the extent the person is impaired in his ability to practice nursing safely.
- (2) Any person or organization furnishing information in accordance with this section is immune from liability to the extent that the information is furnished in good faith and without malice.

**Part 8 - Practice Standards**

**58-31b-801. Practice within limits of competency.**

- (1) Each person licensed under this chapter is responsible for confining his practice as a nurse to those acts and practices permitted by law.
- (2) A person licensed under this act may not engage in any act or practice for which he is not competent.

# **NURSE PRACTICE ACT**

**Title 58, Chapter 31b  
Utah Code Annotated 1953  
As Amended  
Session Laws of Utah 2008  
Issued May 5, 2008**